July 29, 1980

The terms of sale of assets to an unrelated party to be relieved of his liability.

In order to encourage new employers to join in employer plans, a "free kit" rule is provided under which a new employer who does not contribute for more than 6 consecutive plan years may make a plan without incurring liability if the plan is established.

The bill imposes a periodic premium for the purpose of apportioning the amount of withdrawal liability on the basis of the employment's average annual number of employees over the past 5 years preceding the withdrawal. Additionally, liability limitations are provided as follows: First, the liability of an insolvent employer under going liquidation or dissolution would be limited to the sum of 10 percent of the liability plus that portion of 50 percent of the liability which does not exceed the liquidation or dissolution value.

The bill provides for the two types of withdrawal liability: the first type is a PBGC funded plan for withdrawal liability that is not collectable because of a employer's withdrawal, bankruptcy, or insolvency. The second type is a plan which may be established by plan sponsors to relieve employers of portions of a plan's liability that would have been paid by the employer if the plan had not been adopted.

The bill also provides that the establishment of a third type of withdrawal liability is prohibited in which employers in the construction industry may participate.

The effective date for the imposition of withdrawal liability is April 29, 1980. The bill contains provisions that would be effective as of the date the bill is enacted, with the original purpose of a retroactive effective date—namely, to avoid gutting of employer withdrawals while the bill is being considered—has been met. It should be noted that the April 29 effective date is the product of strong political pressures by certain withdrawing employers who were against the earlier date. It is realized that extending these employers to avoid liability only increases the burdens of those employers remaining with the plans in question, but it appears necessary to accept the April 29 date in order to enact the bill before the August 1 deadline for action.

That somewhat increases the burdens of those employers who remain; but it appears necessary to accept this April 29, 1980, date in order to enact the bill before the August 1 deadline for action. It is understood which we now face; and it applies, of course, only within the particular multiple-employer plans to which it relates.

The bill also contains provisions dealing with voluntary, state and local withdrawal liability, the 80 percent floor, and the 85 percent floor. It is important to consider these provisions to determine the impact of the bill on the plans in question.

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S 10102

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also contains proposals on church plans and program oversight. As to the church pension plans, I might say that I am not known to agree with them. It exempts also those who work for schools and similar institutions which are church-related but, nevertheless, if we want a bill there were many things we had to work on that was one of them and I was very unhappy with it.

S 1676 represents years of hard work and deliberation of many parties across the country and four committees of Congress. It may be areas where the bill can be improved but, I believe that is the best that can be produced at this time. The question is when and in order to improve it in areas A and B would there be grave deficiencies created in areas C and D?

Multifactor plan insurance protection in my judgment is a vital element of ERISA's basic objectives affecting over 8 million plan participants. The time is now while we still remain among the many diverse interests in balance to adopt these amendments and to enact them into legislation. I feel that it is best to do that in such a plan guarantee program which provides protection for multiemployer plans insured by the millions of workers who are affected.

Mr. President, that completes my statement.

MR. MATSUO. Mr. President, will the Senator yield?

MR. JAVITS. Yield.

MR. MATSUO. Mr. President, I rise in the pending measure and I wish to commend and congratulate both the Senator from New Jersey (Mr. Wyman) and the Senator from New York (Mr. Javits). They have put in a tremendous amount of work into this bill with so much understanding, with so much yeering here and yielding there to the wishes of others Senators but always with judiciousness.

I, for one, with Hawaii particularly in mind, have seen the same appear before their committee and also to deal with them on a personal basis outside of committee meetings. I must say that I was met with open and frankness and with a cooperative spirit of trying to do what was right, and for this I am truly grateful to both the Senator from New Jersey and the Senator from New York and I express on behalf of the people of Hawaii my deepest gratitude and thanks.

I wish also to commend the chairman of the Finance Committee, the distinguished Senator from Louisiana (Mr. Lowe), the ranking minority member of the committee, the distinguished Senator from Kansas (Mr. Dock), and the chairman of the Subcommittee on Pensions, the distinguished Senator from Texas (Mr. Barretts), for their Barretts', effort in bringing to this floor a sensible, acceptable measure. To them I also extend the appreciation and thanks they so well deserve.

If the floor manager will yield further, the resource available to multifactor plan group as current law for collective bargaining is insufficient and unnecessarily costly. A full inquiry of the floor manager, how he will provide for withdrawal and partial withdrawal as applied to the shipbuilding industry?

MR. WILLIAMS: Yes, it does. We have appreciated the opportunity to work with the Senator in connection with a situation that arose in Hawaii that had a great deal of impact on all the workers on the Labor and Human Resources Committee. Of course, had the Hawaiian preemption question been before us, I had the pleasure of discussing with our friend from Hawaii and his ideas were most well received that others wanted to join in, as a matter of fact, but it was so unique and so good that we wanted to make sure it was preserved. We deal with that way, as exclusive to Hawaii.

MR. MATSUO. Again I express my appreciation.

MR. WILLIAMS. On this whole question of delinquent contributions and the inability of the employer to meet the plan's requirements in a way that provides a direct and I suggest amnibus cause of action under ERISA to a plan against a delinquent employer.

MR. MATSUO. Could we consider a further question. In some recent cases such as the Washington Area Carpenters and Painters Union, a similar collection action brought by plan trustees has been converted into lengthy, costly, and complex litigation concerning claims defenses on behalf of the employer's contributions and the plan's entitlement to the contributions. Would the bill correct this situation?

MR. WILLIAMS. I feel that it would correct the situation. It is essential to the financial health of multiemployer plans that they and their beneficiaries be able to rely on employer's contributions.

Further, plans participate in which the employer promises to make taxable contributions to the plan in exchange for their labor are entitled to rely on their employer's promises. The bill clarifies the legal basis and provides a direct ERISA cause of action against a delinquent employer without regard to exhaustion of other defenses.

MR. MATSUO. The other Senator, of course, will agree that the provisions for employer withdrawal liability are central to this legislation. Will these same principles apply to claims for withdrawal liability?

MR. WILLIAMS. Alternative. This yields a collective bargaining, as is required under a plan's claims for withdrawal liability not be subject to exhaustion of claims and defenses.

MR. MATSUO. One final question, if the Senator will yield further, the bill directs the courts in delinquent cases to award a plan which is entitled to the delinquent contributions, the other costs and damages as well. Do these provisions constitute a maximum? As well as a minimum, restrictive of the plan's ability to plan?

MR. WILLIAMS. These provisions, as drafted and intended them, are a minimum, but not a maximum.

MR. MATSUO. I hereby withdraw my statement of the floor manager, May I enter into a colloquy with the floor manager on another matter relating to withdrawal and partial withdrawal as applied to the shipbuilding industry?

MR. WILLIAMS: I would be happy to continue the colloquy with the floor manager on this point. On this point of impact of the legislation.

MR. MATSUO. Will the floor manager of the bill clarify the withdrawal provisions for withdrawal and partial withdrawal liability?

MR. WILLIAMS. Yes.

MR. MATSUO. The original measure considered by the Senate Finance Committee contained a specific rule for the construction industry. In committee, I raised the shipbuilding industry's interest in withdrawing and partial withdrawal provisions. The shipbuilding industry is cyclical and has problems with intermittent employment as does the construction industry. For example, in good times with new building being built. A shipyard will have a number of workers. If the shipyard's work force will be greatly increased. But as bad times, once the shipyard completes new orders for new ships, it will begin to lay off workers; there is no work to maintain the work force. As such a new order is received, the shipyard will expand. The shipyard, unlike construction sites in the building trades, will remain. The investment in cranes, dock cranes, and shipbuilding equipment is not easily moved. Once shipbuilding resumes, the shipyard will increase the number of its workers. But until that time, the shipyard workers will be left off. Since the shipbuilding industry faces the same cyclical problem as the construction industry, I suggested that the committee broaden the construction industry's rule to include shipbuilding. Various committees members had similar concerns for other industries. Rather than specifically providing for these industries and unintentionally neglecting other industries not mentioned in committee, the committee finally struck a provision to cover all industries similarly affected.

I note that the substitute bill establishes special withdrawal liability rule for the construction industry as an exception to the general withdrawal and partial withdrawal rules. The substitute bill in section 104 allows the Pension Benefit Guaranty Corporation to extend the special withdrawal liability rule to other industries whose characteristics make the special rule appropriate. Is it the floor manager's understanding that this provision will permit the shipbuilding industry to seek such relief from the Pension Benefits Guaranty Corporation? In other words, the Pension Benefits Guaranty Corporation may extend the special withdrawal liability rule to the shipbuilding industry in view of the facts presented by that industry?

MR. WILLIAMS. Yes.

MR. MATSUO. Will the floor manager clarify:

WILL THE PENSION BENEFIT GUARANTY CORPORATION EXTEND THE SPECIAL WITHDRAWAL LIABILITY RULE TO OTHER INDUSTRIES SUCH AS THE SHIPBUILDING INDUSTRY?